

# ARIZONA STATE SENATE

## RESEARCH STAFF



TO: MEMBERS OF THE TRANSPORTATION  
AND TECHNOLOGY COMMITTEE

**GRANT HANNA**  
LEGISLATIVE RESEARCH ANALYST  
COMMERCE AND PUBLIC SAFETY COMMITTEE  
Telephone: (602) 926 -3171  
Facsimile: (602) 926 -3833

DATE: February 13, 2017

SUBJECT: Strike everything amendment to S.B. 1149,  
relating to transportation reinvestment zones and community engagement districts

---

### Purpose

Establishes a Community Engagement District (CED) as a public body and tax levying public improvement district. Requires 50 percent of transaction privilege tax (TPT) collected, excluding Prop 301 monies, from business activity or construction in a CED to be distributed back to the CED. Allows a governing body to form a Transportation Reinvestment Zone (TRZ) to fund a transportation project funded through Tax Increment Financing (TIF).

### Background

Pursuant to [Article 48 of the Arizona Revised Statutes](#), special taxing districts are created to enable the provision of services in an area that might otherwise be limited from receiving those services for various reasons, including size, location, financial limitations or unavailability of other government support. The formation of a special taxing district creates a funding stream to pay for the desired or needed services by placing the responsibility on those who benefit from that service.

Special taxing districts may be designated as municipal corporations and political subdivisions with the same rights, powers and immunities as cities and towns. Special taxing districts are governmental entities functioning under their own separate identity and exempt from taxation on their governmental activities and property ([Article 13 § 7](#)). Tax levying public improvement districts are exempt from the gift clause ([Article 9 § 7](#)) and local debt limits ([Article 9 § 8](#)) prescribed in the Arizona Constitution.

Pursuant to [A.R.S. § 42-5075](#), a prime contracting tax is imposed on income derived from activities that affect real property, with exceptions for certain activities. The tax base for prime contracting classification is 65 percent of the gross proceeds of sales or gross income derived from the business.

This bill may have a negative fiscal impact to the state General Fund by denying full remittance of TPT and prime contracting tax revenues that otherwise would have been generated in the area, as well as any economic activity that migrates from fully-taxable areas to the CED.

Provisions

*Community Engagement District*

1. Establishes a CED as a corporate and political body with all the rights, power and immunities of municipal corporations, including immunity of its property from taxation.
2. Designates a CED as a tax levying public improvement district.
3. Requires 50 percent of TPT collected, excluding Prop 301 monies, from business activity or construction in a CED to be distributed back to the CED monthly.
4. Requires CED disbursements to come from revenues dedicated to the state General Fund.
5. Allows the a CED Board (Board) to levy, in addition to TPT and use taxes, an excise tax of up to two percent of gross sales or gross income from business activity in the CED, including admission and user fees, to be distributed back to the CED monthly.
6. Qualifies a CED for TPT distribution if:
  - a) the municipality in which the CED is located enters into a development agreement with all participants for all CED-owned structures, facilities, infrastructure, equipment and other personal property in the CED; and
  - b) the Board receives a financial commitment, from the municipality or any lawful nongovernmental source, greater than or equal to TPT distributions to be received by the CED.
7. Prohibits TPT distributions from exceeding the aggregate amount of financial commitments obtained by the CED.
8. Requires CED financial commitments to be documented by an intergovernmental agreement or written agreement and made available to the Department of Revenue (DOR).
9. Exempts CEDs from special taxing district requirements for budget reporting, audits and financial review.
10. Exempts CEDs from statute requiring dissolution of special taxing districts after five years of inactivity.
11. Exempts CEDs from statute allowing a county board of supervisors to deny the formation of a special taxing district.
12. Prohibits TPT distributions from exceeding the sum of any municipality debt service contributions and the amount required to:
  - a) fulfill the commitments and obligations of the CED;
  - b) acquire or lease land;
  - c) finance, construct, furnish, operate, use, market, promote, maintain and improve a public facility;
  - d) pay reasonable legal and administrative expenses; and
  - e) do all things necessary or convenient for full use of a public facility.

13. Allows DOR to disclose to the Board confidential taxpayer information for business activity conducted in the CED.
14. Requires TPT distributions to continue until July 1, 2055, or until all financial commitments are completed.

***Transportation Reinvestment Zone***

15. Allow the governing body of a county, city or town to designate a contiguous geographical area as a TRZ to promote one or more transportation projects on a finding that the area is unproductive and undeveloped and that a TRZ will:
  - a) promote public safety;
  - b) facilitate the improvement, development or redevelopment of the property;
  - c) facilitate the movement of traffic; and
  - d) enhance the local entity's ability to sponsor a transportation project.
16. Allows the governing body to fund the TRZ through a TIF.
17. Stipulates that the TIF consists of tax revenue collected from all ad valorem property taxes levied by all taxing jurisdictions, except school districts, on the full cash value of all real property that is taxable by a county, city or town in a TRZ.
18. Requires all or part of TIF revenues to be used to fund the transportation project or projects for which the TRZ was designated, as well as aesthetic improvement within the zone.
19. Allows the governing body to contract with a public or private entity to develop, redevelop or improve a transportation project in the TRZ.
20. Prohibits the governing body from rescinding any pledge to a contacted entity until all commitments of the assignment have been satisfied.
21. Requires the governing body to hold a public hearing at least 30 days before proposing an ordinance that designates a TRZ.
22. Requires the governing body to provide seven days' notice of the hearing by newspaper of general circulation and allow any interested party to speak or submit comments for or against creation of the TRZ.
23. Stipulates that the ordinance designating a TRZ must:
  - a) describe the boundaries with sufficient definiteness;
  - b) provide that the TRZ takes effect immediately on the passage of the ordinance;
  - c) state that the base year is the year of passage or another year in the future;
  - d) designate whether all or a specified percentage of each taxing jurisdictions' tax increment will be paid into the tax increment account;
  - e) assign a name to the TRZ for identification;
  - f) designate the base year for establishing the tax increment base;
  - g) establish a tax increment account for the zone; and

- f) contain findings that the promotion of the transportation project or projects will cultivate the improvement, development or redevelopment of the zone.
- 24. Allows the governing body to amend the boundaries of the zone at any time to accommodate changes in the limits of a project.
- 25. Stipulates that the governing body remains compliant without any further hearings or procedural formalities, unless adding property to a TRZ.
- 26. Requires a governing body to hold a hearing and adopt an ordinance if adding property to the TRZ.
- 27. Exempts school districts from tax increment account obligations, unless the governing body of the school district enters into an agreement with the governing body of the county, city or town that created the TRZ.
- 28. Allows the governing body of a school district to enter into a binding agreement, specifying the portion of the tax increment to be paid, at any time before or after the TRZ is created or enlarged.
- 29. Requires the TRZ to terminate on December 31 of the:
  - a) year in which all contractual requirements for development, redevelopment or improvement of TRZ projects has been satisfied; or
  - b) tenth year after the TRZ was created if the governing body has not entered into any TRZ contracts.
- 30. Allows the governing body to use surplus TIF revenues for non-TRZ purposes.

#### ***Revenue Bonds***

- 31. Allows a CED to issue bonds in a principal amount necessary to:
  - a) fund a public facility with retail sales;
  - b) establish and fully or partially fund any required reserves or sinking accounts;
  - c) issue refunding bonds if the Board deems expedient;
  - d) refund any CED bonds secured by the same source of revenue; and
  - e) issue bonds partly to refund outstanding bonds and partly for any public facility.
- 32. Prohibits retail sales, defined as the sale of tangible personal property to an ultimate consumer, from occupying more than 25 percent of bond-funded public facility square footage.
- 33. Stipulates that *retail sales* do not include:
  - a) sales of foods or beverages for consumption on the premises of the venue;
  - b) the distribution of free promotional products; and
  - c) sales solely to the employees of the public facility.
- 34. Requires the Board to authorize the bonds by a resolution that prescribes the:
  - a) CED's revenue sources pledged and dedicated to secure the bonds;
  - b) rate of fixed or variable interest and date payable;

- c) denominations of the bonds;
  - d) date or dates of the bonds and maturity, which must 30 years after issuance;
  - e) manner of execution;
  - f) medium and place of payment; and
  - g) terms of redemption.
35. Requires all CED bonds to mature and be payable within 480 months after issuance.
36. Requires the Board to provide notice of intention to issue bonds.
37. Allows bonds to be sold by competitive public sale, online bidding process or at a negotiated sale for public or private offerings.
38. Exempts bonds from all state taxation.
39. Requires bonds to be fully negotiable within the meaning and purposes of the Uniform Commercial Code.
40. Stipulates that all bonds are securities authorized for investment by persons carrying on a banking business and deposit with political subdivisions.
41. Allows the Board to secure the principal and interest on the bonds by resolution.
42. Requires any bond pledge to be valid, binding and subject to lien from the time the pledge is made.
43. Allows the CED to purchase bonds for cancellation.
44. Requires surplus funds to be used to pay other outstanding CED debt before crediting the CED's general fund.
45. Allows the Board to authorize its fiscal agent to invest bond funds.
46. Requires funds derived from bond sales to be deposited in Board-designated financial institutions.
47. Prohibits the state from limiting, altering or impairing the rights vested in the CED to receive bond funds.
48. Immunizes bonds from the legality of any proceeding relating to the acquisition, construction, improvement, operation or maintenance of a bond funded public facility.

***Public Facility***

49. Defines a *public facility* as any facility or facilities that include a *primary component* and *secondary components*.

50. Qualifies, as a *primary component*, a structure used to accommodate sporting, entertainment, cultural, civic, meeting, trade show or convention events or activities that is located on lands, adjacent to each other or separated by public rights-of-way, owned or leased by the CED.
51. Qualifies, as *secondary components*, any related commercial facilities located within the multipurpose facility site or any on-site infrastructure, artistic components, parking garages and lots, and public parks and plazas determined necessary or beneficial to the *primary component* by the Board.
52. Prohibits a *primary component* from being a structure or part of structure that is used or designed for use as a county, city or town hall, a meeting space for a county, city or town governing body or a general municipal administrative office space other than for the administration, maintenance and operation of the multipurpose facility.

### ***Property***

53. Limits the geographic area of the CED to 30 acres entirely within the corporate boundaries of a city.
54. Requires the CED to obtain assurances that the real property owner has the financial capability to perform its obligation under any agreement with the CED.
55. Requires the real property owner to agree in writing to maintain insurance, or an adequate self-insurance plan, and hold the CED harmless from any liability caused by the negligent or intentional acts of the property owner.

### ***CED Petitions***

56. Requires a petition from every owner of real property within the proposed CED to initiate public proceedings with the city governing body.
57. Stipulates that the city governing body, on petition by all owners of real property within the proposed CED, must file a general plan for the CED, adopt a resolution declaring intent to establish a CED and hold a public hearing.
58. Requires the city resolution, if obligatory, to be adopted by January 1, 2019, and include:
  - a) the area to be included in the CED;
  - b) the purposes for which the CED is established;
  - c) notice that the general plan for the CED is on file with the city clerk;
  - d) the date, time and place of the hearing to be held regarding CED establishment;
  - e) disclosure that written objections may be filed;
  - f) that taxes may be levied to pay the costs of CED improvements, including their operation and maintenance; and
  - g) reference to applicable statute.
59. Requires the public hearing, if necessary, to be held 60 to 90 days after receipt of the petition and with a 20-day notice provided on the city website or in a newspaper of general circulation.

60. Authorizes any qualified elector residing within the proposed CED to file a written objection with the city clerk before 5 p.m. on the business day before the hearing.
61. Stipulates that a written objection must either state that the objector's property would not be benefited from the improvements set forth in the general plan or detail specific reasons why the CED should not be established.
62. Prohibits the city governing body from acting on anything beyond written objections, testimony and evidence presented.
63. Requires the public hearing minutes, written transcript or recording to include the findings supporting the establishment of the CED.

### ***Construction & Operation***

64. Requires the Board to provide for the construction, use, furnishing, improvement, operation, marketing, promotion and maintenance of a *public facility*.
65. Allows the Board to enter into one or more development agreements with the city and any other party that may include debt financing for construction of the *public facility*.
66. Authorizes the Board to use revenues of the CED and from other lawfully available sources to:
  - a) acquire or lease land;
  - b) finance, construct, furnish, operate, use, market, promote, maintain and improve a *public facility*;
  - c) pay reasonable legal and administrative expenses; and
  - d) do all things necessary or convenient for full use of a *public facility*.
67. Exempts, from prime contracting tax, CED contracts primarily involving surface or subsurface improvements to land, even if the contract also includes vertical improvements,
68. Exempts the CED from the Arizona Procurement Code.
69. Exempts the CED from statutory requirements for public buildings and improvements when using alternative systems and procedures, including *design-build* construction and *qualifications-based selection*.
70. Defines *design-build* as a process of entering into and managing a contract between the CED and another party in which the other party agrees to both design and build the *public facility* as specified in the contract.
71. Defines *qualifications-based selection* as a process of entering into and managing a contract between the CED and another party in which the other party is selected by the CED on the basis of the party's qualifications and experience in designing or constructing a public facility or facilities, structures or items similar to those the CED is authorized to construct.

72. Requires the CED, through its Board and in cooperation with the other parties to the development agreement, to:
- a) negotiate and enter into agreements with developers, contractors and architects for the construction of any portion of the public facility, unless an architect will be employed directly by a contractor;
  - b) review construction change order requests;
  - c) arrange for capital financing;
  - d) work with the users, contractors and architects to prepare and maintain a theme or design for the public facility;
  - e) prepare construction budgets and schedules;
  - f) negotiate and enter into use agreements with tenants and other users of the *public facility*;
  - g) prepare the CED's annual operating budget;
  - h) participate in contracting for the use, management, operation, maintenance, reconstruction and improvement of the *public facility*;
  - i) take necessary action to ensure the *public facility* is constructed, managed, operated, maintained and improved according to schedule and budget; and
  - j) ensure the *public facility* is occupied and used according to the use agreements.
73. Allows the CED, through its Board and in cooperation with the other parties to the development agreement, to:
- a) lease all or part of the *public facility* to users, charge and collect rent from lessees and terminate any lease on the failure of the lessee to comply with the obligations of the lease;
  - b) employ or contract for services as necessary for financing, constructing and operating the *public facility* and any on-site or off-site improvements used in connection with the *public facility*; and
  - c) do any other act that is necessary or appropriate to carry out the purposes of the CED.
74. Prohibits the CED from operating the *public facility* as a business, other than a lessor or licensor for use.
75. Prohibits the Board from levying any impact fee, development fee or other assessment on the development of real property in the CED.

#### ***Board Administration***

76. Requires the CED to be governed by a Board consisting of:
- a) one member appointed by the Governor;
  - b) one member appointed by the President of the Senate;
  - c) one member appointed by the Speaker of the House; and
  - d) two members appointed by the governing body of the city in which the CED is established.
77. Sets Board member terms at four years.
78. Prohibits conflicts of interest by Board members, officers and CED employees.
79. Prohibits compensation to Board members for their service.



80. Allows the Board, on behalf of the CED, to:

- a) adopt and use a corporate seal;
- b) sue and be sued;
- c) enter into contracts, including intergovernmental agreements;
- d) adopt administrative rules as necessary to administer and operate the district and any property under its jurisdiction;
- e) hire an Executive Director;
- f) employ administrative and clerical employees, or contract for other management personnel, and prescribe the terms and conditions of their employment;
- g) acquire by any lawful means, other than eminent domain, and operate, maintain, encumber and dispose of real and personal property and interests in property; and
- h) retain legal counsel and other consultants.

81. Requires the Board to:

- a) appoint a chairperson, a secretary and other necessary officers, designating the county treasurer as ex-officio treasurer of the CED;
- b) keep and maintain a complete and accurate public record of all proceedings;
- c) provide for the use, maintenance and operation of the properties and interests controlled by the CED; and
- d) submit a report to the Governor, Legislature and Secretary of State by October 1 of each year detailing the activities, operations, revenues and expenditures of the CED.

82. Allows the Chairs of the Senate Finance Committee and House Ways and Means Committee to hold joint or separate hearings to consider the CED annual report.

83. Requires the Board, by June 30 of each year, to hold a public hearing for adoption of an annual budget that includes receipts, expenditures, estimates expenses, anticipated revenue, an asset and liability statement, a profit or loss statement, current cash on hand, commitments, reserves and anticipated obligations for the following year and private funding and financing committed to *public facility* purposes.

84. Allows the Board to amend the budget on a finding of good cause.

85. Requires a financial and performance audit, funded by and pertaining to the CED, to be performed by the Auditor General or an independent auditor beginning in 2020 and every three years thereafter.

86. Requires the CED to hold a public hearing within 45 days after the release of the audit and adopt a public response to each finding and recommendation of the audit.

87. Allows the Chair of the Joint Committee on Capital Review to request appearance by a Board representative to report on any aspect of the CED's operation.

88. Declares that the state and political subdivisions of this state other than the CED are not liable for any financial or other obligation of the CED.

89. Requires the CED to maintain a general fund consisting of all revenues and monies received.

90. Requires, if liquid assets in the CED general fund are insufficient to meet CED obligations, liquidation of sufficient securities to meet unfilled obligations and performance of an Auditor General's report investigating fund insolvency.
91. Requires the CED to maintain a construction account in the CED general fund consisting of monies received for the purpose of acquiring land and funding the cost of constructing the public facility.
92. Requires the Board, if issuing bonds, to establish a bond proceeds account in the CED general fund to be used only for public facility purposes.
93. Requires the Board, if issuing bonds, to establish a debt service account in the CED general account to be used only for repayment purposes.
94. Requires dissolution of the Board within five years after the CED has disposed of all real and personal property and has no outstanding financial or other obligations.

***Other***

95. Makes technical and conforming changes.
96. Become effective on the general effective date.

GH/rr